

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

STATE OF WASHINGTON )  
DEPARTMENT OF ECOLOGY and )  
SLADE GORTON, ATTORNEY GENERAL, )  
Appellants, )  
vs. )  
COUNTY OF SNOHOMISH, )  
Respondent, )  
JAMES SCOTT RHODES, )  
Intervenor. )

SHB No. 38

ORDER GRANTING MOTION  
TO DISMISS

Intervenor Rhodes' Motion to Dismiss appellants' Request for Review came on before the Board for oral argument on June 15, 1973, at Lacey, Washington. Board members present were: Ralph A. Beswick, W. A. Gissberg, James T. Sheehy and Ken Stevens, (designee of Association of County Commissioners).

Ben Westmoreland appeared for Intervenor, Rhodes; Darrell Syferd appeared for Snohomish County; Robert V. Jensen appeared for appellants.

1 After having considered the affidavits in the file, the briefs of  
2 the parties, oral statements and the original copy of the Shoreline  
3 Management Permit filed with the Attorney General, and being fully  
4 advised, the Board arrives at the following

5 DECISION

6 The parties agreed to the following facts:

- 7 1. A Shoreline Management Permit was granted by Snohomish County  
8 on September 11, 1972.
- 9 2. On September 15, 1972, copies of permit were mailed to the  
10 Attorney General, Department of Ecology and Rhodes.
- 11 3. On September 18, 1972, the Attorney General received a copy  
12 of the permit. The time lapse between the date of filing the  
13 permit with his office and the date of November 3, 1972, was  
14 46 days.
- 15 4. On November 3, 1972, appellants filed their Request for Review  
16 with the Shorelines Hearings Board and Snohomish County.
- 17 5. Snohomish County had not adopted its master program for  
18 shorelines.

19 Intervenor and respondent contend the appeals must be dismissed  
20 because they were not timely filed. They first contend that the 30 day  
21 appeal provision in RCW 90.58.140 is applicable and even if it is not  
22 then the Request for Review is barred by RCW 90.58.180(2) because of  
23 having failed to perfect the Request for Review within 45 days.

24 We find that both of these Requests for Review are governed by  
25 RCW 90.58.180(2). The Request for Review of the Attorney General is not  
26 timely since more than 45 days had elapsed.

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1 We now consider the appeal of the Department of Ecology. At issue  
2 is the time lapse between the date of "filing" of the permit by  
3 Snohomish County with the Department of Ecology (RCW 90.58.140)(5) and  
4 the date that the Request for Review was "filed" with this Board  
5 (RCW 90.58.180)(2). We find, from the uncontroverted affidavits of  
6 Intervenor that copies of the original application, Order granting  
7 the permit and the permit were deposited in the mail at Everett,  
8 Washington on September 15, 1972, and addressed in conformity with  
9 the rule of the Department of Ecology which follows:

10 "WAC 173-14-090 FILING WITH DEPARTMENT OF ECOLOGY  
11 AND ATTORNEY GENERAL. Copies of the original appli-  
12 cation and the ruling approving or denying the  
13 permit shall be delivered by the local government  
14 within five days of approval or denial to BOTH the  
15 following:

16 Department of Ecology  
17 Shoreline Management Permits  
18 P. O. Box 829  
19 Olympia, Washington 98504

20 Office of Attorney General  
21 Temple of Justice  
22 Shoreline Management Permits  
23 Olympia, Washington 98504. . ."

24 We also find that the copy addressed to the Attorney General was  
25 "delivered" to him on Monday, September 18, 1972, and that the copy  
26 addressed to the Department of Ecology was "delivered" on September 18,  
27 1972, to its post office box in Olympia. For unexplained reasons not  
apparent from the record, the copy delivered to the Department of  
Ecology was not received by it in its headquarters at Lacey until  
September 19, 1972. Several explanations are possible: (1) The  
department did not pick up its mail from its post office box on  
September 18, or; (2) Having picked up its mail, it did not affix its

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1 "received" stamp thereon until September 19.

2 The question, therefore, is: Was the deposit in the post office  
3 box on September 18, "delivered" in accordance with RCW 90.58.140(5)?  
4 We find that it was. To find otherwise would subject the permit holder  
5 to possible situations whereby he would not know for periods extending  
6 far beyond 45 days whether his permit had been stayed by a Request for  
7 Review.

8 "Delivery" is defined in BLACK, LAW DICTIONARY (4th ed. 1951) as:

9 "The act by which the res or substance thereof is  
10 placed within the actual or constructive possession  
or control of another"

11 When the permit, etc., was placed into the post office box of the  
12 Department of Ecology it was placed in its "actual or constructive  
13 possession or control."

14 "File is defined in BLACK, supra, as:

15 " 'To file' a paper, on the part of a party, is to  
16 place it in the official custody of the clerk. 'To  
17 file', on the part of the clerk, is to endorse upon  
the paper the date of its reception, and retain it  
in his office. . ."

18 Snohomish County filed the papers by causing them to be placed in  
19 the official custody of the Department of Ecology when they were placed  
20 in its post office box on September 18, 1972.

21 In view of our holding, it is not necessary to decide whether  
22 RCW 1.12.070 is applicable to this case.

23 It is the Board's

24 ORDER

25 1. The Motions to Dismiss are granted and the Requests for Review  
26 of the Department of Ecology and the Attorney General be and they are

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1 dismissed.

2 DONE at Lacey, Washington this 27th day of June, 1973.

3 SHORELINES HEARINGS BOARD

4 Walt Woodward  
5 WALT WOODWARD, Chairman

6 W. A. Gissberg  
7 W. A. GISSBERG, Member

8 James T. Sheehy  
9 JAMES T. SHEEHY, Member

10  
11 ROBERT F. HINTZ, Member

12 Ken Stevens  
13 KEN STEVENS, Member

14 Ralph A. Beswick  
15 RALPH A. BESWICK, Member

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